

Todd M. Friedman (SBN 216752)
Suren N. Weerasuriya (SBN 278521)
Adrian R. Bacon (SBN 280332)
LAW OFFICES OF TODD M. FRIEDMAN, P.C.
324 S. Beverly Dr., #725
Beverly Hills, CA 90212
Phone: 877-206-4741
Fax: 866-633-0228
tfriedman@attorneysforconsumers.com
sweerasuriya@attorneysforconsumers.com
abacon@attorneysforconsumers.com
Attorneys for Plaintiff

Additional Attorneys On Signature Page

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

THOMAS BARTON and LEON
ABDULLAH, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

THE UNIVERSITY OF PHOENIX,
INC.,

Defendant.

) Case No.

)

) **CLASS ACTION**

)

) **COMPLAINT FOR VIOLATIONS
OF:**

)

1. NEGLIGENT VIOLATIONS
OF THE TELEPHONE
CONSUMER PROTECTION
ACT [47 U.S.C. §227 ET
SEQ.]
2. WILLFUL VIOLATIONS
OF THE TELEPHONE
CONSUMER PROTECTION
ACT [47 U.S.C. §227 ET
SEQ.]

)

) **DEMAND FOR JURY TRIAL**

)

)

Thomas Barton and Leon Abdullah (Collectively referred to herein as

1 “Plaintiffs”), individually and on behalf of all others similarly situated, allege the
2 following upon information and belief based upon personal knowledge:

3 **NATURE OF THE CASE**

4 1. Plaintiffs bring this action individually and on behalf of all others
5 similarly situated seeking damages and any other available legal or equitable
6 remedies resulting from the illegal actions of the University of Phoenix, Inc.
7 (“Defendant”), in negligently, knowingly, and/or willfully contacting Plaintiffs on
8 Plaintiffs’ cellular telephone in violation of the Telephone Consumer Protection
9 Act, 47 U.S.C. § 227 *et seq.* (“TCPA”), thereby invading Plaintiffs’ privacy.

10 **JURISDICTION & VENUE**

11 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because
12 Plaintiffs, residents of California, seeks relief on behalf of a Class, which will
13 result in at least one class member belonging to a different state than that of
14 Defendant, a company with its principal place of business and State of
15 Incorporation in the state of Arizona. Plaintiff also seeks up to \$1,500.00 in
16 damages for each call in violation of the TCPA, which, when aggregated among a
17 proposed class in the thousands, exceeds the \$5,000,000.00 threshold for federal
18 court jurisdiction. Therefore, both diversity jurisdiction and the damages
19 threshold under the Class Action Fairness Act of 2005 (“CAFA”) are present, and
20 this Court has jurisdiction.

21 3. Venue is proper in the United States District Court for the Northern
22 District of California pursuant to 18 U.S.C. 1391(b) and 18 U.S.C. § 1441(a)
23 because Defendant does business within the state of California and at least one
24 Plaintiff resides within Lake County, within the Northern District.

25 **PARTIES**

26 4. Plaintiff, Thomas Barton (“Plaintiff Barton”), is a natural person
27 residing in Lake County, California and is a “person” as defined by 47 U.S.C. §
28 153 (10).

1 5. Plaintiff, Leon Abdullah (“Plaintiff Abdullah”), is a natural person
2 residing in California and is a “person” as defined by 47 U.S.C. § 153 (10).

3 6. Defendant, The University of Phoenix, Inc. (“Defendant”), is a for-
4 profit institution of higher learning, headquartered in Phoenix, Arizona, and is a
5 “person” as defined by 47 U.S.C. § 153 (10).

6 **FACTUAL ALLEGATIONS**

7 7. Beginning in or around October of 2014, Defendant began
8 contacting Plaintiff Barton on his cellular telephone number ending in 6675, in an
9 attempt to solicit Plaintiff Barton to utilize Defendant’s services in securing
10 Plaintiff Barton a college degree. Defendant contacted or attempted to contact
11 Plaintiff Barton from telephone number (707)736-1580.

12 8. On or around June 8, 2014, Plaintiff Barton inquired about the
13 services in which Defendant provides via a questionnaire which he submitted
14 online. This online submission notwithstanding, Plaintiff Barton never, at any
15 time or through any medium, provided Defendant with his express consent to be
16 contacted via an “automated telephone dialing system.” During all relevant
17 times, Defendant contacted or attempted to contact Plaintiff Barton on *at least*
18 thirty-three (33) occasions using an “automated telephone dialing system,” since
19 October of 2014, a time span of approximately three (3) months. Furthermore,
20 Plaintiff Barton informed Defendant to cease contacting him *several times* when
21 Defendant contacted him on several occasions.

22 9. Beginning in or around November of 2014, Defendant began
23 contacting Plaintiff Abdullah on his cellular telephone number ending in 9885, in
24 an attempt to solicit Plaintiff Abdullah to utilize Defendant’s services in securing
25 Plaintiff Abdullah a college degree.

26 10. Defendant used an “automatic telephone dialing system”, as defined
27 by 47 U.S.C. § 227(a)(1) to place its call to Plaintiffs seeking to solicit its services
28 to Plaintiffs

11. Defendant's calls constituted calls that were not for emergency purposes as defined by 47 U.S.C. § 227(b)(1)(A).

12. Defendant's calls were placed to telephone number assigned to a cellular telephone service for which Plaintiffs incur a charge for incoming calls pursuant to 47 U.S.C. § 227(b)(1).

13. Plaintiffs are not customers of Defendant's services. Accordingly, Defendant never received Plaintiffs' "prior express consent" to receive calls using an automatic telephone dialing system or an artificial or prerecorded voice on her cellular telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

CLASS ALLEGATIONS

14. Plaintiffs bring this action individually and on behalf of all others similarly situated, as a member of the proposed class (hereafter "The Class") defined as follows:

All persons within the United States who received any solicitation/telemarketing telephone calls from Defendant to said person's cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously consented to receiving such calls within the four years prior to the filing of this Complaint

17. Plaintiffs represent, and is a member of, The Class, consisting of All persons within the United States who received any collection telephone calls from Defendant to said person's cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously not provided their cellular telephone number to Defendant within the four years prior to the filing of this Complaint.

18. Defendant, its employees and agents are excluded from The Class. Plaintiffs do not know the number of members in The Class, but believes the

1 Class members number in the thousands, if not more. Thus, this matter should be
2 certified as a Class Action to assist in the expeditious litigation of the matter.

3 19. The Class is so numerous that the individual joinder of all of its
4 members is impractical. While the exact number and identities of The Class
5 members are unknown to Plaintiffs at this time and can only be ascertained
6 through appropriate discovery, Plaintiffs are informed and believes and thereon
7 allege that The Class includes thousands of members. Plaintiffs allege that The
8 Class members may be ascertained by the records maintained by Defendant.

9 20. Plaintiffs and members of The Class were harmed by the acts of
10 Defendant in at least the following ways: Defendant illegally contacted Plaintiffs
11 and Class members via their cellular telephones thereby causing Plaintiffs and
12 Class members to incur certain charges or reduced telephone time for which
13 Plaintiffs and Class members had previously paid by having to retrieve or
14 administer messages left by Defendant during those illegal calls, and invading the
15 privacy of said Plaintiffs and Class members.

16 21. Common questions of fact and law exist as to all members of The
17 Class which predominate over any questions affecting only individual members
18 of The Class. These common legal and factual questions, which do not vary
19 between Class members, and which may be determined without reference to the
20 individual circumstances of any Class members, include, but are not limited to,
21 the following:

- 22 a. Whether, within the four years prior to the filing of this
23 Complaint, Defendant made any telemarketing/solicitation call
24 (other than a call made for emergency purposes or made with
25 the prior express consent of the called party) to a Class
26 member using any automatic telephone dialing system or any
27 artificial or prerecorded voice to any telephone number
28 assigned to a cellular telephone service;

1 b. Whether Plaintiffs and the Class members were damages
2 thereby, and the extent of damages for such violation; and

3 c. Whether Defendant should be enjoined from engaging in such
4 conduct in the future.

5 22. As a person that received numerous telemarketing/solicitation calls
6 from Defendant using an automatic telephone dialing system or an artificial or
7 prerecorded voice, without Plaintiffs' prior express consent, Plaintiffs are
8 asserting claims that are typical of The Class.

9 23. Plaintiffs will fairly and adequately protect the interests of the
10 members of The Class. Plaintiffs have retained attorneys experienced in the
11 prosecution of class actions.

12 24. A class action is superior to other available methods of fair and
13 efficient adjudication of this controversy, since individual litigation of the claims
14 of all Class members is impracticable. Even if every Class member could afford
15 individual litigation, the court system could not. It would be unduly burdensome
16 to the courts in which individual litigation of numerous issues would proceed.
17 Individualized litigation would also present the potential for varying, inconsistent,
18 or contradictory judgments and would magnify the delay and expense to all
19 parties and to the court system resulting from multiple trials of the same complex
20 factual issues. By contrast, the conduct of this action as a class action presents
21 fewer management difficulties, conserves the resources of the parties and of the
22 court system, and protects the rights of each Class member.

23 25. The prosecution of separate actions by individual Class members
24 would create a risk of adjudications with respect to them that would, as a practical
25 matter, be dispositive of the interests of the other Class members not parties to
26 such adjudications or that would substantially impair or impede the ability of such
27 non-party Class members to protect their interests.

28 26. Defendant has acted or refused to act in respects generally applicable

1 to The Class, thereby making appropriate final and injunctive relief with regard to
2 the members of the Class as a whole.

3 **FIRST CAUSE OF ACTION**

4 **Negligent Violations of the Telephone Consumer Protection Act**

5 **47 U.S.C. §227 et seq.**

6 27. Plaintiffs repeat and incorporate by reference into this cause of
7 action the allegations set forth above at Paragraphs 1-22.

8 28. The foregoing acts and omissions of Defendant constitute numerous
9 and multiple negligent violations of the TCPA, including but not limited to each
10 and every one of the above cited provisions of *47 U.S.C. § 227 et seq.*

11 29. As a result of Defendant's negligent violations of *47 U.S.C. § 227 et*
12 *seq.*, Plaintiffs and the Class Members are entitled an award of \$500.00 in
13 statutory damages, for each and every violation, pursuant to *47 U.S.C. §*
14 *227(b)(3)(B).*

15 30. Plaintiffs and the Class members are also entitled to and seek
16 injunctive relief prohibiting such conduct in the future.

17 **SECOND CAUSE OF ACTION**

18 **Knowing and/or Willful Violations of the Telephone Consumer Protection**
19 **Act**

20 **47 U.S.C. §227 et seq.**

21 31. Plaintiffs repeat and incorporate by reference into this cause of
22 action the allegations set forth above at Paragraphs 1-26.

23 32. The foregoing acts and omissions of Defendant constitute numerous
24 and multiple knowing and/or willful violations of the TCPA, including but not
25 limited to each and every one of the above cited provisions of *47 U.S.C. § 227 et*
26 *seq.*

27 33. As a result of Defendant's knowing and/or willful violations of *47*
28 *U.S.C. § 227 et seq.*, Plaintiffs and the Class members are entitled an award of

1 \$1,500.00 in statutory damages, for each and every violation, pursuant to 47
2 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

3 34. Plaintiffs and the Class members are also entitled to and seek
4 injunctive relief prohibiting such conduct in the future.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff requests judgment against Defendant for the following:

7 **FIRST CAUSE OF ACTION**

8 **Negligent Violations of the Telephone Consumer Protection Act**

9 **47 U.S.C. §227 et seq.**

- 10 • As a result of Defendant's negligent violations of 47 U.S.C.
11 §227(b)(1), Plaintiffs and the Class members are entitled to and
12 request \$500 in statutory damages, for each and every violation,
13 pursuant to 47 U.S.C. 227(b)(3)(B).
14 • Any and all other relief that the Court deems just and proper.

15 **SECOND CAUSE OF ACTION**

16 **Knowing and/or Willful Violations of the Telephone Consumer Protection**
17 **Act**

18 **47 U.S.C. §227 et seq.**

- 19 • As a result of Defendant's willful and/or knowing violations of 47
20 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to
21 and request treble damages, as provided by statute, up to \$1,500, for
22 each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and
23 47 U.S.C. §227(b)(3)(C).
24 • Any and all other relief that the Court deems just and proper.

25 ///

26 ///

27 ///

28 ///

1 Respectfully Submitted this 28th Day of February, 2015.

2
3
4 LAW OFFICES OF TODD M. FRIEDMAN, P.C.

5 By: /s/ Todd M. Friedman
6 Todd M. Friedman
7 Law Offices of Todd M. Friedman
8 Attorney for Plaintiff

9 KAZEROUNI LAW GROUP, APC
10 Abbas Kazerounian, Esq. (SBN: 249203)
11 ak@kazlg.com
12 245 Fisher Ave., Ste. D1
13 Costa Mesa, California 92626
14 Telephone: (800) 400-6808
15 Facsimile: (800) 520-5523

16 HYDE & SWIGART
17 Joshua B. Swigart, Esq. (SBN: 225557)
18 josh@westcoastlitigation.com
19 2221 Camino Del Rio South, Suite 101
20 San Diego, CA 92108
21 Telephone: (619) 233-7770
22 Facsimile: (619) 297-1022
23
24
25
26
27
28